

OPERATION OF PATENT AND TRADEMARK OFFICE MAIL CENTER**Supplemental FAR Clauses**

Following are supplemental clauses applicable to the submission of proposals and award of the Operation of the Patent and Trademark Office Mail Center (MAIL CENTER) acquisition. A specific contract type has not yet been selected, therefore, all applicable clauses are listed below. Any resultant contract will incorporate the appropriate FAR clauses for the contract type selected.

All referenced Federal Acquisition Regulation (FAR) clauses are incorporated by reference in the Project Agreement/Solicitation and have the same force and effect as if they were given in full text. The full text of referenced FAR clauses may be accessed through at (<http://www.arnet.gov/far>)

PART II - CONTRACT CLAUSES**SECTION I - CONTRACT CLAUSES****I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

<u>NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
52.202-01	Definitions.	OCT 1995
52.203-03	Gratuities.	APR 1984
52.203-05	Covenant Against Contingent Fees.	APR 1984
52.203-06	Restrictions on Subcontractor Sales to the Government.	JUL 1995
52.203-07	Anti-Kickback Procedures.	JUL 1995
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	JAN 1997
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity.	JAN 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions.	JAN 1990
52.204-04	Printing/Copying Double-Sided on Recycled Paper	JUN 1996
52.209-06	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	JUL 1995
52.214-34	Submission of Offers in the English Language	APR 1991
52.214-35	Submission of Offers in U.S. Currency	APR 1991
52.215-01	Instructions to Offerors – Competitive Acquisition	OCT 1997
52.215-02	Audit and Records-Negotiation	AUG 1996
52.215-14	Integrity of Unit Prices.	OCT 1997
52.216-07	Allowable Cost and Payment	MAR 1997
52.216-08	Fixed Fee	MAR 1997
52.217-09	Option to Extend the Term of the Contract	AUG 1989
52.219-08	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.	OCT 1995
52.219-09	Small, Small Disadvantaged and Women-Owned Small Business	AUG 1996

Subcontracting Plan.

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<u>NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
52.219-16	Liquidated Damages—Subcontracting Plan.	OCT 1995
52.222-02	Payment for Overtime Premiums	JUL 1990
52.222-24	Pre-award On-Site Equal Opportunity Compliance Review	APR 1984
52.222-26	Equal Opportunity	APR 1984
52.222-28	Equal Opportunity Pre-award Clearance of Subcontracts	APR 1984
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	APR 1998
52.222-36	Affirmative Action for Handicapped Workers	APR 1984
52.222-37	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era	JAN 1998
52.222-41	Service Contract Act of 1965, as Amended	MAY 1989
52.222-43	Fair Labor Standards Act and Service Contract Act-Price Adjustment for (Multiple Year and Option Contracts)	MAY 1989
52.223-02	Clean Air and Water.	APR 1984
52.223-06	Drug-Free Workplace.	JAN 1997
52.223-10	Waste Reduction Program	OCT 1997
52.223-14	Toxic Chemical Release Reporting.	OCT 1996
52.225-09	Buy American Act—Trade Agreements—Balance of Payments Program.	JAN 1996
52.225-11	Restrictions on Certain Foreign Purchases.	OCT 1996
52.227-01	Authorization and Consent.	JUL 1995
52.227-14	Rights in Data—General.	JUN 1987
52.228-05	Insurance--Work on a Government Installation.	JAN 1997
52.229-03	Federal, State, and Local Taxes.	JAN 1991
52.229-05	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	APR 1984
52.232-01	Payments.	APR 1984
52.232-07	Payments under Time-and-Materials and Labor Hour Contracts Alternate II	JAN 1986
52.232-08	Discounts for Prompt Payment	MAY 1997
52.232-17	Interest.	JUN 1996
52.232-18	Availability of Funds	APR 1984
52.232-23	Assignment of Claims.	JAN 1986
52.232-25	Prompt Payment.	JUN 1997
52.232-33	Mandatory Information for Electronic Funds Transfer Payment.	AUG 1996
52.233-01	Disputes.	OCT 1995
52.233-03	Protest after Award.	AUG 1996
52.237-03	Continuity of Services	JAN 1991
52.242-01	Notice of Intent to Disallow Costs	APR 1984
52.242-13	Bankruptcy.	JUL 1995
52.243-01	Changes--Fixed-Price.	AUG 1987
52.243-02	Changes - Cost Reimbursement	AUG 1987
52.243-03	Changes - Time-and-Materials or Labor-Hours	JUL 1995
52.243-07	Notification of Changes	APR 1984
52.244-01	Subcontracts (Fixed-Price Contracts).	OCT 1997
52.244-02	Subcontracts (Cost Reimbursement and Letter Contracts	FEB 1997
52.244-03	Subcontracts (Time-and-materials or Labor-Hours)	APR 1985
52.245-01	Property Records	APR 1984
52.245-02	Government Property (Fixed-Price Contracts).	DEC 1989
52.246-02	Inspection of Supplies - Fixed Price	JUL 1985
52.246-03	Inspection of Supplies - Cost Reimbursement	APR 1984
52.246-04	Inspection of Services - Fixed Price	FEB 1992
52.246-06	Inspection – Time-and-Material and Labor-Hours	JAN 1986

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<u>NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
52.248-01	Value Engineering.	MAR 1989
52.249-02	Termination for Convenience of the Government (Fixed-Price).	SEP 1996
52.249-06	Termination (Cost-Reimbursement (Alternate IV (APR 1984)	MAY 1986
52.249-08	Default (Fixed-Price Supply and Service).	APR 1984
52.249-14	Excusable Delays	APR 1984
52.251-01	Government Supply Sources	APR 1984
52.252-02	Clauses Incorporated by Reference	JUN 1988
52.252-06	Authorized Deviations in Clauses	APR 1984
52.253-01	Computer Generated Forms.	JAN 1991

<http://www.arnet.gov/far>

I.2 52.219-17 SECTION 8(A) AWARD (DEC 1996)

- (a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:
- (1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).
 - (2) Except for novation agreements and advance payments, delegates to the Patent and Trademark Office the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; provided, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.
 - (3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.
 - (4) To notify the Patent and Trademark Office Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.
 - (5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

- (b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.
- (c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the Patent and Trademark Office.

**I.3 52.219-18 NOTIFICATION OF COMPETITION LIMITED
TO ELIGIBLE 8(A) CONCERNS (JUL 1996)**

- (a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer--
 - (1) SIC code 8744 (Base Maintenance) is specifically included in the Offeror's approved business plan;
 - (2) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and
 - (3) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.
- (b) By submission of its offer, the Offeror certifies that it meets all of the criteria set forth in paragraph (a) of this clause.
- (c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.
- (d) Agreement.
 - (1) A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.
 - (2) The contractor will notify the Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

**I.4 1352.233-2 SERVICE OF PROTESTS
(DEVIATION FAR 52.233-2) (AUG 1996)**

- (a) Protests, as defined in 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Patent and Trademark Office
Office of Procurement - Box 6
Crystal Park Bldg. 1 - Room 810
Washington, D.C. 20231
ATTN: Naomi Sorrell

and from the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation located at the U. S. Department of Commerce, Herbert C. Hoover Building, Room H5893, 14th Street between Pennsylvania and Constitution Avenues, N. W., Washington, D. C. 20230.

- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with GAO.

**I.5 DEPARTMENT OF COMMERCE AGENCY-LEVEL PROTEST PROCEDURES
LEVEL ABOVE THE CONTRACTING OFFICER (DEC 1996)**

I. PURPOSE: To implement the requirements of Executive Order No. 12979 and Federal Acquisition Regulation (FAR 33.103).

On October 25, 1995, President Clinton signed Executive Order No. 12979 which directs heads of executive agencies to develop administrative procedures for resolving protests to awards of procurement contracts within their agencies at a level above the contracting officer. Authority to administer procurement-related directives has been delegated within the Department of Commerce through the Chief Financial Officer and Assistant Secretary for Administration to the Director for Acquisition Management (Procurement Executive).

The Department's goal is to encourage protesters to resolve their protests at the agency level, help build confidence in the Government's acquisition system, and reduce protests to the General Accounting Office and other external fora. Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions. If concerns cannot be resolved, protesters may use these procedures when a resolution is requested from the agency at a **level above the contracting officer**.

II. DEFINITIONS:

An agency protest is one that may be filed with **either** the contracting officer or the protest decision authority but not both. When a protester decides to file a protest at the agency level with the protest decision authority, the guidelines set forth in these established agency level protest procedures above the contracting officer apply. These procedures are in addition to the existing protest procedures contained in the Federal Acquisition Regulation (FAR) Part 33.102.

A day is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open.

III. PROCEDURES:

- a. Protesters using these procedures may protest to the protest decision authority who will make the final decision for the Department. Protests shall be addressed to:

James R. Lynch
Comptroller and Deputy Chief Financial Officer
U.S. Patent and Trademark Office
Crystal Park One
2011 Crystal Drive, Suite 805
Washington, DC 20231
Fax Number: (703) 305-8138

The outside of the envelope or beginning of the FAX transmission must be marked "**Agency-level Protest**". The protester shall also provide a copy of the protest within 1 day to the responsible contracting officer and a copy to the addressee indicated below:

Contract Law Division
Office of the Assistant General Counsel for Finance and
Litigation
Department of Commerce, Room H5882
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(FAX Number 202-482-5858)

- b. **Election of forum:** While a protest is pending at the agency level with the protest decision authority, the protester agrees not to protest to the General Accounting Office (GAO) or any other external fora. If the

protester has already filed with the GAO or other external fora, the procedures described here may not be used.

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1. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. In cases other than those covered in the preceding two sentences, protests shall be filed not later than 14 days after the basis of the protest is known or should have been known, whichever is earlier.
2. To be filed on a given day, protests must be received by 4:30 PM current local time. Any protests received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is provided.
3. To be complete, protests must contain the following information:
 - (i) the protester's name, address, telephone number, and fax number
 - (ii) the solicitation or contract number, name of contracting office and the contracting officer
 - (iii) a detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was prejudiced
 - (iv) copies of relevant documents supporting protester's statement
 - (v) a request for ruling by the agency
 - (vi) Statement as to form of relief requested
 - (vii) all information establishing that the protester is an interested party for the purpose of filing a protest
 - (viii) all information establishing the timeliness of the protest

All protests must be signed by an authorized representative of the protester.

Within 14 days after the protest is filed, the contracting officer will **prepare** an administrative report that responds to the issues raised by the protester and addresses any other issues, which, even if not raised by the protester, have been identified by agency officials as being relevant to the fairness of

the procurement process. For good cause shown, the protest decision authority may grant an extension of time for filing the administrative report and for issuing the written decision. When an extension is granted, the protest decision authority will notify the protester and all interested parties within 1 day of the decision to grant the extension.

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Unless an extension is granted, the protest decision authority will issue a decision within **35 days** of the protest. The protest decision authority's final decision will be binding on the Department of Commerce and not subject to further appeals.

The protest decision authority shall send a written ruling and a summary of the reasons supporting the ruling to the protester by **certified mail, return receipt requested with information copies to the applicable contracting office and Office of Acquisition Management.**

Effect of protest on award and performance:

When a protest is filed prior to award, a contract may not be awarded unless authorized by the **Head of the Contracting Activity (HCA)** based on a written finding that:

- (i) The supplies or services are urgently required, (ii) delivery or performance would be unduly delayed by failure to make the award promptly, or (iii) a prompt award will be in the best interest of the Government.

When a protest is filed within 10 days after contract award or 5 days after a debriefing date was offered to the protester under a timely debriefing request in accordance with FAR 15.1004, whichever is later, the contracting officer shall immediately suspend performance pending the resolution of the protest within the agency, including any review by an independent higher official, unless continued performance is justified. The HCA may authorize contract performance, notwithstanding the protest, based on a **written finding** that:

- (i) contract performance would be in the best interest of the United States, or (ii) urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

IV. REMEDIES:

The protest decision authority may grant one or more of the following remedies:

- (1) terminate the contract,
- (2) re-compete the requirement,
- (3) issue a new solicitation,
- (4) refrain from exercising options under the contract,
- (5) award a contract consistent with statutes and regulations,

- (6) amend the solicitation provisions which gave rise to the protest and continue with the procurement,
- (7) such other remedies as the decision-maker may determine are necessary to correct a defect.

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